IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2433 OF 2004

Balwant @ Balkrishna Dattatraya Mane, Petitioner.
Vs
1. Anandrao Balkrishna Mane and ors. Respondents
Mr Amit Sale, for the petitioner.
Mr N.J.Patil, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : FEBRUARY 22, 2005.

P.C.

1. Heard the learned counsel for the parties.

2. In this writ petition, the petitioner has impugned the order dated 6.2.2004 passed by the Appellate Court in Misc. Civil Appeal No.7/2002 by which the appeal filed by the respondents-defendants was allowed. The operative part of the impugned order reads thus:

> "1. The appeal is allowed with no order as to the costs. The impugned judgment and order dated 16.1.2002 passed by the III Jt Civil Judge, Jr Dn.,Karad below application for ad-interim injunction Exh.5 in Regular Civil Suit no.363/2000, are hereby set aside. The said application for injunction (Exh.5) submitted by the plaintiff stands dismissed.

2. The Nazir of the Trial Court, in whose custody the key of suit property is placed, is directed to hand over the key to the defendant no.1 or his Advocate on or after 5.3.2004.

3. A decree be prepared accordingly."

The appeal was directed against the judgment and order dated 16.1.2002 by which the petitioner -plaintiff's application Exhibit-5 filed in Regular Civil Suit No.363 of 2000 was allowed. The petitioner had prayed for injunction restraining the respondents-defendants from demolishing the shop premises situate in C.S.No.1540 at Mouje Ogalewadi, Taluka -Karad.

3. In this petition, while issuing notice, this Court had granted interim order in terms of prayer clause (b). Prayer (b) reads thus:

"Pending hearing and final disposal of this writ petition, the judgment and order dated 6.2.2004 passed by the learned 2nd Ad-hoc Addl.District Judge, Karad in Misc. Civil

Appeal No.363 of 2000 be stayed and further by issuing an order of injunction against the respondents, they be restrained from demolishing the suit premises and/or damaging to it any manner to the suit property."

4. Mr.Patil, learned counsel for the respondents, submits that before passing of the interim order in terms of prayer clause (b), the Nazir of the Court handed over the key of the suit premises to respondent no.1. Mr.Sale, learned counsel for the petitioner, does not dispute the statement made by Mr Patil. In view of this, instead of keeping the writ petition pending in this Court any more, in my opinion, the following order will meet the ends of justice.

(i) The respondents shall not demolish the suit premises and/or damage it in any manner till the disposal of the suit bearing Regular Civil Suit No.363 of 2000.

(ii) The trial Court shall endeavour to decide the suit as expeditiously as possible and preferably within a period of one year from today. The petitioner to produce a copy of this order before the

trial Court within four weeks from today.

(iii) It is needless to express that the trial Court shall decide the suit uninfluenced by the observations made by the courts below in the proceedings arising out of Exhibit-5 application and by the fact that the key of the suit property has been handed over to the respondents-defendants. The handing over of key in pursuance of the order dated 6.2.2004 shall be subject to outcome of the suit.

(iv) The writ petition is accordingly disposed of.

(D.B.Bhosale, J.)